

9

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 8TH DAY OF JUNE 1998

BEFORE

THE HON'BLE MR.JUSTICE M.F. SALDANHA

W.P. NO. 16200/1996

BETWEEN

Parameswar Bhat
since deceased by L.Rs:-

1. Gurunath Parameswar Bhat
major, agriculturist
2. Ramanath Parameswar Bhat,
major, agriculturist

both are r/of.Hulemalgi Village
Bengal Gram, Sirsi Taluk, U.K. Dist.

PETITIONERS

(By Sri S.R. Hegde Hudlamane, Adv.)

AND

1. Land Tribunal Sirsi,
rep. by its Chairman
Sirsi, U.K. Dist.
2. State of Karnataka
rep. by its Secretary
Revenue Dept., Vidhana Soudha
Bangalore-1.
3. Sowmya Tai Bangari Harijan
major, coolie,
r/of.Bengade Village
Sirsi Taluk, U.K. Dist.

RESPONDENTS

(Smt.M.R. Shanthakumari, HCGP for R.1 & R.2)

(Sri Shivaswamy, Adv. for R.3)


2

Memorandum of writ petition is filed under Arts. 226 & 227 of the Constitution praying that this Court be pleased to quash vide Annex.H dt. 18.3.96 by R.1 etc.

Writ petition coming on for prly. hearing this day, the Court made the following:-

ORDER

This writ petition assails an order dt. 18.3.96 passed by the Tribunal pursuant to a remand by this Court. An earlier order dt. 17.10.1981 had been passed by the Tribunal in favour of respondent-3 and this Court quashed that order on two grounds the main one being that the petitioners who claim ownership rights in respect of the land as also being actual cultivators were neither made a party nor were they heard when the order was passed behind their back. It is relevant for me to mention that after the remand, a period of about 15 years had passed in so far as we are now concerned with an order dt. 18.3.96. Undoubtedly, the position that obtained as on 1.3.1974 is material but, the Tribunal ought to have looked at the material produced by the petitioners and the respondent for purposes of judicially deciding the case on merits. Whereas the petitioners' learned advocate is justified when



he points out to me that the entries for the relevant year stand in the name of the petitioners and there is not even any reference to the respondent and furthermore they have reinforced their case by examining the neighbouring owner, *whereas* the respondent-3 has not produced any evidence whatsoever in support of her plea. The Tribunal has grossly erred in holding that when the earlier order was passed in 1981, there is a reference to the fact that the learned Member of the Tribunal had personally visited the spot and found the respondent-3 cultivating paddy. Where the Tribunal has erred is in confirming the order dt. 17.10.1981 which had been expressly set aside by this Court on the basis of the same material which was elicited behind the back of the petitioners. This is not all because there is ample evidence produced by the petitioners in support of their case which puts the matter beyond all doubt.

2. The learned Govt. Advocate drew my attention to the fact that the respondent-3 is a poor person and that she belongs to the Harijan community and that therefore she has many limitations. I do fully agree that the Court is

S

293

required to take these factors into consideration and in appropriate cases due weightage will certainly be given because the Court will have to take into account the realities under which several poor persons are labouring.

3. In the present case the mere aspect of sympathy cannot override the rights of the present petitioners as far as their property is concerned and this is precisely where the Tribunal was in error.

4. Having regard to the aforesaid situation, the impugned order is set aside. The petition is allowed. In the circumstances of the case, there shall be no order as to costs. *The case is remanded to the Tribunal for a de novo hearing.*

Sd/-
JUDGE

GS/-